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AUG 10 2004

In re Application of
Gerald D. Eckstein *et al*
Application No. 10/085,966
Filed: February 28, 2002
Attorney Docket No. 8266-0823

Director's Office DECISION ON PETITION
Group 3700

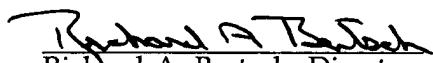
This is a decision on the petition, apparently resubmitted on April 9, 2004 after having been originally facsimile transmitted on January 23, 2004 (with a 37 CFR 1.8(a) certificate of transmission affixed thereto), requesting supervisory review of, and relief from, the examiner's refusal to enter the amendment after final action that was filed on December 29, 2003. There is no fee for the petition.

The petition is granted.

A review of the arguments presented in the petition, and of the file history, shows that there is no adequate basis in the record for refusing to enter the amendment in question, since at a minimum, it places the application in better form for appeal. The rationale for this conclusion is identical to that presented by petitioners, it being noted that the advisory action dated January 12, 2004 does not state any rationale at all in support of the conclusion that the proposed amendments change the scope of the claim (item 2 of the advisory action).

Accordingly, the application file is being forwarded to the Supervisory Patent Examiner (SPE) of Art Unit 3754 who will have the amendment in question entered. It is noted that an appeal brief was filed on January 26, 2004. The SPE should review the claims in the appendix of the brief. To the extent that the claims in the appendix of the appeal brief, and the arguments in the appeal brief, are no longer addressed to the claims of record in the application due to entry of the amendment filed on December 29, 2003, the SPE will have the examiner promulgate a letter requiring a supplemental appeal brief, setting a TWO MONTH period, subject to the extension of time provisions of 37 CFR 1.136(a), for filing the supplemental appeal brief. After entry of the amendment filed on December 29, 2003 and filing of the supplemental appeal brief, if such is necessary, the application will be forwarded to the examiner for appropriate action.

PETITION GRANTED.


Richard A. Bertsch, Director

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